

<b>Notice of Allowability</b>	Application No.	Applicant(s)	
	09/936,216	DALL, DAVID JAMES	
	Examiner Ashwin Mehta	Art Unit 1638	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTO-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1.  This communication is responsive to papers filed 13 December 2004.
2.  The allowed claim(s) is/are 1,4,6-8,19 and 23-26.
3.  The drawings filed on 23 January 2002 are accepted by the Examiner.
4.  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a)  All
  - b)  Some\*
  - c)  None
 of the:
  1.  Certified copies of the priority documents have been received.
  2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3.  Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.  
**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

5.  A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
6.  CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
  - (a)  including changes required by the Notice of Draftsperson's Patent Drawing Review ( PTO-948) attached
    - 1)  hereto or 2)  to Paper No./Mail Date \_\_\_\_\_.
  - (b)  including changes required by the attached Examiner's Amendment / Comment or in the Office action of
 Paper No./Mail Date \_\_\_\_\_.
7.  DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

#### Attachment(s)

1.  Notice of References Cited (PTO-892)
2.  Notice of Draftsperson's Patent Drawing Review (PTO-948)
3.  Information Disclosure Statements (PTO-1449 or PTO/SB/08),  
Paper No./Mail Date 12132004
4.  Examiner's Comment Regarding Requirement for Deposit  
of Biological Material
5.  Notice of Informal Patent Application (PTO-152)
6.  Interview Summary (PTO-413),  
Paper No./Mail Date attached.
7.  Examiner's Amendment/Comment
8.  Examiner's Statement of Reasons for Allowance
9.  Other \_\_\_\_\_.

***Claim Rejections***

1. The rejections of claims 1-8 and 19 under 35 U.S.C. 112, 1<sup>st</sup> and 2<sup>nd</sup> paragraphs, are withdrawn in light of the claim amendments.
2. The rejection of claims 1-2 under 35 U.S.C. 102(b) is withdrawn in light of the claim amendments.
3. The rejections of claims 1, 2, 7-9, and 19 under 35 U.S.C. 103(a) are withdrawn in light of the claim amendments.

***Information Disclosure Statement***

4. Regarding the citations listed in the IDS submitted on December 13, 2004 that have been lined through: the citations were lined through only because they are present on, and initialed by the Examiner as considered, in previously submitted IDS statements.

***Examiner's Amendment***

5. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Judith Toffenetti on March 9, 2005.

Art Unit: 1638

In the claims:

1. A plant transformed with at least one polynucleotide molecule comprising a nucleotide sequence encoding an insect virus fusolin protein or a fusolin-like protein, said nucleotide sequence being operably linked to a suitable promoter sequence, wherein said transformed plant expresses said fusolin protein or fusolin-like protein in[, at least,] plant tissue or tissues susceptible to damage by feeding insects [plants].

Claims 9-18, 20-22, and 27 have been cancelled.

In claim 24, line 2, the recitation “pathogenic bacteria” was replaced with --bacteria pathogenic to insects--.

26. A method for inhibiting [feeding,] growth or development of an insect, the method comprising cultivating a plant according to claim 1 where it can be accessed by insect larvae, wherein upon ingestion of the plant, [feeding,] growth or development of the insect is inhibited.

6. Claims 1, 4, 6-8, 19, and 23-26 are allowed.

*Contact Information*

Any inquiry concerning this or earlier communications from the Examiner should be directed to Ashwin Mehta, whose telephone number is 571-272-0803. The Examiner can normally be reached from 8:00 A.M to 5:30 P.M. If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Amy Nelson, can be reached at 571-272-0804. The fax phone numbers for the organization where this application or proceeding is assigned are 571-

Art Unit: 1638

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For all other customer support, please call the USPTO Call Center (UCC) at 800-786-9199.

March 9, 2005



Ashwin D. Mehta, Ph.D.  
Primary Examiner  
Art Unit 1638